

Paloma A. Capanna
Attorney & Policy Analyst

106-B Professional Park Drive
Beaufort, North Carolina 28516
(585) 377-7260
(315) 584-2929 mobile

P. O. Box 95
Keene Valley, New York 12943

**Admitted to practice in NY, N.D.N.Y., W.D.N.Y.,
2d & 4th Cir., U.S. Supreme Court*

May 1, 2024

U.S. Magistrate Judge Daniel J. Stewart
United States District Court
Northern District of New York
445 Broadway, Room 409
Albany, New York 12207

via CM/ECF

Re: Nadine Gazzola, et al. v. Gov. Kathleen Hochul, et al.
Case No. 1:22-cv-1134 (BKS/DJS)

To the Hon. Daniel J. Stewart:

This letter is the update from Plaintiffs' Counsel in response to Text Order 84, dated April 19, 2024. Consistent with my remarks during our recent joint telephonic conference, there is no update. A recap from the teleconference may be helpful.

Plaintiffs petitioned the U.S. Supreme Court on March 7, 2024 (see case 23-995).¹

The answer to the petition by the State is due Monday, May 13, 2024. This is on the docket page, referenced in footnote 1, below.

Sequentially, the SCOTUS Clerk will move the case into "case conference" status. This becomes an entry on the public-facing case docket page.

SCOTUS case conferences are conducted on Thursdays in accordance with their calendar found at: <https://www.supremecourt.gov/> as a green-shaded "conference day."

Gazzola may go onto the case conference for May 16, but I suggested during our teleconference that May 23 may be more realistic. The related case of *Antonyuk v. James*, SCOTUS Case No. 23-910, should be on the same sequencing.² Both cases were heard at the Second Circuit on

¹ SCOTUS website at:
<https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/23-995.html>.

² N.D.N.Y. also, assigned to Judge Suddaby.

May 1, 2024

Page 2

March 20, 2023 and are appealed from separate decisions of that court issued on December 8, 2023. The SCOTUS answer submission calendar for the State synchronized the cases.

SCOTUS case conference results are published on Mondays at 9:30 a.m.

The final SCOTUS case conference for this term is June 20, 2024. Theoretically, the *Gazzola* and *Antonyuk* Petitions for Cert could be announced as granted/denied at any point between Monday, May 20, 2024 and Monday, June 24, 2024.

Typically, such decisions are in the 1-3 week range of first case conference. Because this is the end of term and because these are two significant, related cases, this may impact that timing.

Ms. Cowan and I thus request a continuing stay in District Court and suggest we report back to this court within seven days of the announcement by SCOTUS of the grant/denial of cert on the *Gazzola* Petition in 23-995. This seems an easier N.D.N.Y. calendar entry than selecting another arbitrary date, perhaps?

Please be welcomed to contact counsel with any questions. As was expressed during our teleconference, Plaintiffs' appeal of the TRO/PI combined decision of Judge Sannes was immediately taken. We filed our Notice of Appeal to the Second Circuit the day after she filed her text order. It then took literally one full 12-month period to achieve the Second Circuit decisions on the TRO and then the PI. In contrast, concurrent appeals from Second Circuit rulings made by Plaintiffs to SCOTUS (two with state response; one without) were determined in less than thirty days, each. There have been eleven rulings by Second Circuit and SCOTUS courts since departing Judge Sannes, if you include rulings on motions for stays and for/against formal joinder with *Antonyuk*. There was no lack or gap in effort by the Plaintiffs to achieve a stay of enforcement of the challenged laws, pending the merits decision.

Note is simply made that I am the only one with crow's nest view in that the State uses different attorneys at each level of court and the three court filing systems are not connected. I am the sole attorney representing the Plaintiffs in all aspects of their case. I lay out this recap in written format out of appreciation that it is otherwise difficult to see the aggregate of litigation undertaken to arrive at the pending SCOTUS Petition.

I thank you for your attention to this most interesting case.

This letter is submitted with pre-filing review and communication of Ms. Cowan.

Respectfully submitted,

Paloma A. Capanna

Paloma A. Capanna

c.: Aimee Cowan, Esq., NYS Office of the Attorney General (via CM/ECF)